IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.4114 OF 2007
IN
SUIT NO. 2983 OF 2004

Madhav Vithal Angane. ...Plaintiff.
Vs.
Rajyog Developers Pvt.Ltd. & Ors. ...Defendants.
....
Mr. Harish R. Pawar for the Plaintiff.
Mr. S.M. Khaire with Ms. Sheetal Nadkarni for Defendant Nos.1 and 3.
.....

CORAM :DR.D.Y.CHANDRACHUD, J.
November 27, 2007.

P.C.:

Counsel appearing on behalf of the Plaintiff and the Defendants have been heard on the Notice of Motion which has been taken up for hearing and final disposal by consent.

2. The father of the Plaintiff was a monthly tenant in respect of Tenement No.26, on the second floor of the building known as “Bhagirathi Bhavan”, situated at Ganesh Lane, Lalbaug, Mumbai.

The building was to be redeveloped and on 15th March 2001, an agreement was entered into by the First Defendant with the Plaintiff by which the First Defendant agreed to allot a flat admeasuring 804 sq.ft. of carpet area, in the building which was to be constructed, as and by way of permanent alternate accommodation. Clause 2 of the agreement provided as follows :

> "The builders shall allot to the tenant on ownership basis a flat admeasuring 804 sq.feet carpet area in the proposed building (hereinafter referred to as "the said Flat") as and by way of Permanent Alternate Accommodation. The said Flat shall have specifications and amenities as per list a copy whereof has been handed over to the Tenant duly initialled by the Builders for the sake of identification."

Clause 7 of the agreement provided that the Builder would pay to the Plaintiff as a tenant, a sum of Rs.5,500/- per month from the date on which possession of the premises was handed over by the Plaintiff, until the date on which possession of permanent alternate accommodation was offered to the Plaintiff.

3. The suit has been instituted for specific performance. A

Notice of Motion, being Notice of Motion 2704 of 2007, was taken out by the Plaintiff. At the stage of ad-interim relief, an order was passed by a Learned Single Judge on 5th October 2007. The grievance of the Plaintiff was that he was being called upon by the developer to vacate the premises in the transit camp, bearing Room No.24, as a condition precedent for allotment of permanent alternate accommodation. This Court in its order dated 5th October 2007 came to the conclusion that so long as the Plaintiff did not vacate Room No.24 in the transit camp, the question of allotting premises in the newly constructed building in lieu of the tenanted premises (Room No.26) did not arise. To that extent, the Court accepted the arguments of the developer that the Plaintiff would have to vacate the transit accommodation while securing permanent alternate accommodation. In paragraph 3 of the order of this Court dated 5th October 2007, the Learned Single Judge specifically recorded the statement of the Defendants that the Plaintiff would be offered a tenement on the fourth floor, admeasuring 640 sq.ft. in lieu of Room No.26 which was originally tenanted to the Plaintiff, but the Plaintiff

would have to vacate the transit accommodation. The Court observed that this should be done simultaneously. The order of the Court was to the following effect :

> "Nevertheless, as the defendant in all fairness is willing to offer one tenement on the fourth floor which is admeasuring 640 sq.ft. in lieu of original Room No.26 in the old building, the Plaintiff, if so desired, may take possession of the said premises only after vacating the transit camp accommodation being Room No.24 already in his possession. Both this shall be done simultaneously by the parties."

After the order of this Court was passed on 5th October 2007, the Plaintiff by a letter dated 17th October 2007 informed the Defendants that he had already vacated the transit accommodation comprised in Room No.24 at Azad Nagar, Sewree. The developer was called upon to hand over the permanent alternate accommodation. A second letter dated 24th October 2007 was addressed. There was no response to either of the two letters upon which the present Notice of Motion has been instituted.

4. The Motion came up for hearing on 2nd November 2007 on

which date, the First Defendant was directed to file a reply on or before 5th November 2007 and liberty was reserved to the parties to move the Learned Vacation Judge. A copy of the reply has been served on the Plaintiff on 5th November 2007, but has still not been affirmed. Be that as it may, in the interests of justice, Counsel appearing on behalf of the Defendants has been permitted to rely upon the reply subject to the undertaking tendered to the Court that the reply would be duly affirmed within a period of two weeks from today.

5. The First Defendant does not dispute the entitlement of the Plaintiff to housing accommodation admeasuring 640 sq.ft. In fact, in the affidavit filed in the earlier Notice of Motion by the Third Defendant on behalf of the Defendants, there is an express acknowledgement of the entitlement of the Plaintiff in the following terms:

> "With reference to para 3, I say that it is true that vide agreement dated 15th March 2001 the Defendant No.1 agreed to provide to the Plaintiff a residential premises in lieu of Plaintiff's said Room No.26. I say that the area agreed to be allotted to the Plaintiff in lieu of his said

> tenanted room under the aforesaid agreement in the proposed new building is a flat admeasuring 640 sq.ft. (Carpet Area) and not 804 sq.ft. (Carpet Area) as falsely alleged by the Plaintiff."

As already noted earlier, the Learned Single Judge of this Court also recorded the statement of the Defendants in the order dated 5th October 2007 to the effect that the First Defendant was willing to offer a tenement on the fourth floor admeasuring 640 sq.ft. in lieu of the original room in the old building. The only condition was that the Plaintiff must vacate the transit accommodation which the Court observed should be done simultaneously. This condition has been fulfilled since it is not disputed before the Court that the transit accommodation has been vacated.

6. The only submission which has been urged on behalf of the Defendants at the hearing of the motion, based on paragraph 10 of the reply is that the Defendants are "ready to file appeal" against the order of the Learned Single Judge dated 5th October 2007. Admittedly, no appeal has been filed until date. Moreover, the order

of this Court dated 5th October 2007 records the statement of the Defendants, which as noted earlier, is also consistent with the express position of the Defendants on affidavit. In these circumstances, the Plaintiff having duly complied with the condition of vacating the transit accommodation, it would be appropriate that relief as prayed should be granted in the Notice of Motion. A mandatory order is necessary in the interests of justice. There is no dispute about the fact that the Plaintiff was a tenant in the erstwhile premises and allotment of permanent alternate accommodation upon redevelopment of the property is to rehabilitate the Plaintiff in recognition of his earlier occupation. In fact, redevelopment would not have been possible, but for the consent given by the Plaintiff. Now that the reconstructed building is ready, it is apparent that the developer is putting up a ruse not to comply with his obligations. Such conduct cannot be countenanced by this Court.

7. The Notice of Motion is accordingly made absolute in terms of prayer clause (a).

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